

**December 2, 2004
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IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 30638

STATE OF IDAHO,)	
)	Boise, September 2004 Term
Plaintiff-Appellant,)	
)	2004 Opinion No. 126
v.)	
)	Filed: December 2, 2004
BENJAMIN REED LAMAY,)	
)	Frederick C. Lyon, Clerk
Defendant-Respondent.)	
)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Darla S. Williamson, District Judge.

The decision of the District Court granting LaMay's motion to suppress is affirmed.

Hon. Lawrence G. Wasden, Attorney General, Boise, for appellant.
Kenneth K. Jorgensen argued.

James K. Ball, Boise, for respondent.

In an opinion released today, the Idaho Supreme Court affirmed a decision of the Fourth Judicial District Court to suppress evidence obtained in a warrantless search of a hotel room.

On November 26, 2001, Boise City police officers searched the Plaza Suite Hotel to apprehend and arrest Benjamin Reed LaMay (LaMay) on outstanding warrants. Upon locating LaMay and placing him under arrest and custody, the officer's questioned him regarding possible drugs and/or drug paraphernalia inside the hotel room he had been staying. LaMay told the officers there was marijuana in a jar under the pillow of the bed he had been sitting on. The officers then went back into the room to search for the marijuana. During this search, the officers came upon a closed black nylon backpack sitting on the floor next to the bed where the officers had first encountered LaMay. The officers searched this bag and found money, cocaine, marijuana and other drug paraphernalia, later used to charge LaMay with additional crimes.

A district court granted LaMay's motion to suppress the evidence obtained from the backpack. The State appealed. The issue on appeal was whether the evidence obtained from the backpack was admissible under the search incident to arrest doctrine.

The Idaho Supreme Court affirmed the ruling of the district court to suppress the evidence, holding that: (1) the *Belton* test extending the scope of the area considered to be in the immediate control of a defendant does not apply in Idaho to searches incident to arrest where the search is not conducted in a vehicle, and (2) the district court properly applied the *Chimel* factors in determining the backpack was not in LaMay's immediate control prior to search. Thus the search was an unreasonable warrantless search under the Fourteenth Amendment of the U.S. Constitution and the evidence was properly suppressed.